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FILE: B-186244

DATE: June 16, 1976

MATTER OF: Hydro Fitting Mfg. Corp.

## DIGEST:

1. Protest against alleged improprieties in solicitation not filed prior to bid opening with either contracting agency or GAO is untimely.
2. GAO does not review protests against affirmative determinations of responsibility by contracting officials except in cases of fraud or misapplication of definitive responsibility criteria set out in solicitation.

Hydro Fitting Mfg. Corp. (Hydro) has protested the making of an award for safety relief valves to any other bidder under solicitation No. DSA700-76-B-1236 issued by the Defense Supply Agency (DSA).

Bids were opened on February 27, 1976, with Hydro being the second low bidder. Immediately following bid opening Hydro protested to DSA. Hydro's protest advances two contentions:

1. The solicitation as issued contained outdated specifications for the safety relief valves and did not adequately disclose to bidders the difficulty experienced in timely producing the items; and
2. The low bidder is not capable of performance in full compliance with the contract, i.e., the low bidder is nonresponsible.

Hydro has also made similar allegations with respect to the earlier award of a contract (DSA700-75-C-5265) for the same item which it contends it first learned of upon receipt of the administrative report in response to its protest under the current solicitation.

The first allegation goes to the adequacy of the solicitation and specifications. Section 20.2 of our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)) urges protesters to first seek resolution of their complaints with the contracting officer. It reads in pertinent part:

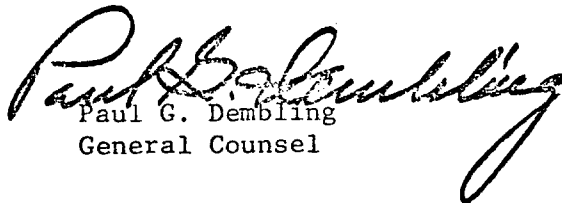
"(a) \* \* \* if a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section, \* \* \*

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening.  
\* \* \*" (Emphasis added.)

The alleged improprieties in the solicitation were apparent prior to bid opening. Since Hydro's protest was not filed with either DSA or this Office until after bid opening, it is untimely and not for consideration on the merits.

With respect to Hydro's second allegation, this Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied; neither of which is alleged nor demonstrated here. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64.

Accordingly, we must decline to consider the merits of the protest.

  
Paul G. Dembling  
General Counsel